

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
37.78.102, 37.78.206, 37.78.208,)
37.78.420, 37.78.425, 37.78.506, and)
37.78.508, pertaining to Temporary)
Assistance for Needy Families (TANF))

TO: All Interested Persons

1. On September 6, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-411 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 1296 of the 2007 Montana Administrative Register, issue number 17.

2. The department has amended ARM 37.78.102, 37.78.208, 37.78.420, 37.78.425, and 37.78.508 as proposed.

3. The department has amended the following rules as proposed with the following changes from the original proposal. New matter underlined. Matter to be deleted is interlined.

37.78.206 TANF: GENERAL ELIGIBILITY REQUIREMENTS (1) through (3)(k) remain as proposed.

(l) all required members of the filing unit, or individuals who would have been a required member of the filing unit at the time of sanction, which includes an individual who is sanctioned for noncompliance in allowable work activities as defined in ARM 37.78.103 and 37.78.807 negotiated in the Family Investment Agreement/WoRC Employability Plan (FIA/EP) or sanctioned for failure to accept and maintain employment without good cause, if the sanction results in an ineligibility period as defined in ARM 37.78.506; with the following exceptions:

(i) minor children who are removed from the household by Child and Family Services and who are determined eligible for child only TANF in another household;
or

(ii) minor children who are determined eligible for child only TANF in another household.

(m) through (6)(a)(i) remain as proposed.

AUTH: 53-2-201, 53-4-212, MCA

IMP: 53-2-201, 53-4-211, MCA

37.78.506 TANF: TANF CASH ASSISTANCE; SANCTIONS (1) If any member of the assistance unit fails or refuses without good cause as defined in ARM 37.78.508 to comply with an allowable work activity as defined in (8), or to provide verification and/or documentation of participation in the activities, a sanction will be

imposed on the individual. The first sanction will result in the reduction of the monthly TANF Cash Assistance payment by an amount equal to one person's share of the payment for one month. The second sanction will result in case closure and the imposition of a one month ineligibility period against all required filing unit members or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The third sanction will result in case closure and the imposition of a three month ineligibility period against all required filing unit members or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The fourth and subsequent sanctions will result in a six months ineligibility period against all required filing unit members or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The ineligibility period will follow the required filing unit members or individual(s) even if they move to another household and apply for benefits as part of that household; with the following exceptions:

(a) minor children who are removed from the household by Child and Family Services and who are determined eligible for child only TANF in another household;
or

(b) minor children who are determined eligible for child only TANF in another household. This rule does not apply to households who are receiving TANF extended benefits as defined in ARM 37.78.202. The imposition of a sanction ends the currently negotiated FIA/WoRC Employability Plan the last day of the penalty month. A sanction is considered imposed even if a fair hearing is requested and continued benefits are issued.

(2) through (10) remain as proposed.

4. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

ARM 37.78.206 and 37.78.506 - Amendments Relating to Sanctions

COMMENT #1: Commentor supports the department's intensive case management treatment initiative to work with families having trouble meeting the requirements.

Commentor thinks the proposed changes are not consistent and punitive towards children who go to live with caretaker relatives when parents have a violation if the caretaker relatives cannot get a child only grant, especially with reference to Native American people who rely heavily on extended family assistance to care for their children. Why punish the children and deny them assistance because of a parent's violation? Many grandparents take in their grandchildren in troubled situations. How, in such situations, can the department impose sanctions on the children whose well-being depends on the grandparent taking them in?

Commentor stated that the sanctions are not helping families, which are struggling, sanctioned and end up in even worse situations, destroying any stability the family may have achieved before being sanctioned. Some families won't apply for TANF

because of such punitive sanctions, the commentor states, and chose to live in squalor instead. Commentor supports using intensive case management to help avoid families going into a sanction situation.

Commentor understands that no matter what the department does, some will not comply with program requirements; however, the department should not affect and apply the sanctions to those who are trying to meet the program requirements but are still failing for some reason, but not on purpose.

Commentor supports decreasing required work hours, particularly since by the commentator's calculations, participants only earn \$2.64 per hour under the program. If the person can get a minimum wage job they could earn \$10,000 for the same amount of time.

RESPONSE: The department has no further comment regarding the requirement for an intensive case management meeting, but continues to support this requirement.

The department has considered the numerous comments regarding the imposition of sanctions against children, and has amended the ARMs to indicate two exceptions will exist to the imposition of an ineligibility period due to sanction against children who were required filing unit members at the time of sanction. The department believes these amendments will assist in addressing the concerns and comments received. These exceptions are as follows:

If children who are under a sanction ineligibility period are removed from the home by Child and Family Services and placed in another household, they may be eligible for child only TANF cash assistance during the ineligibility period, provided all other eligibility criteria are met, i.e., living with a specified caretaker relative within the 5th degree of kinship.

If a specified caretaker relative, who is within the 5th degree of kinship, makes application for child only TANF for children who are under a sanction ineligibility period, the children who are under a sanction ineligibility period may be eligible, provided all other eligibility criteria are met, i.e., child support enforcement referrals on both absent parents.

The department is amending ARM 37.78.206 and 37.78.506 accordingly.

As reflected in the rationale language in the proposal submission of the ARM to the Secretary of State, the department maintains the change to the sanction policy is necessary to assist the department in meeting the mandated work participation rate and in negating possible monetary penalties to the state for failure to meet the participation rate. The TANF Reauthorization regulations contain strict definitions of allowable work activities, as well as criteria for verification and documentation of such work activities. Individuals who are not complying with allowable work activities are subject to sanction and have a negative impact on the work participation rate.

By strengthening the consequences for noncompliance, the department believes it may limit the negative impact to the work participation rate.

In preparing the proposed changes to the sanction policy, the department has taken into consideration changes it intends to make regarding the decrease of hours of required participation in allowable work activities. This will allow households to better meet family obligations while maintaining compliance with the allowable work activities. The department agrees with the comment that individuals who obtain employment, even at minimum wage, would be financially more stable than solely relying on TANF.

When preparing the proposed changes to the sanction policy, the department also took into consideration existing policy which allows granting exceptions to participating for individuals who are fully incapacitated and the offering of accommodations in order to allow the individual to participate to the best of their ability. These processes are intended not only to give the participants the opportunity to avail themselves of the training opportunities available but to also assist the department in identifying those who choose not to comply versus those who are unable to participate fully.

The department is required by federal regulation to maintain a sanction policy and process for individuals who are not complying with allowable work activities. While some families may choose not to apply for TANF based on the potential to be sanctioned for noncompliance, the department has no option but to have a sanction policy and process in place. The proposed changes to the sanction policy put the state more in line with sanction policies in surrounding states. The policy of the department has always excused a participant's failure to comply with program requirements, including participation in allowable work activities, upon the showing of "good cause". If an individual can show good cause for noncompliance, a sanction would not be imposed.

ARM 37.78.420 - Increase to TANF Benefit Amounts

COMMENT #2: Commentor supports the increase to TANF funding.

RESPONSE: The department would clarify that the increase was not to TANF funding but to the TANF payment standards or the monthly benefit amount. The department has no further comment regarding the increase to the TANF payment standards but does continue to support this increase.

The following comments did not appear to pertain to a specific ARM amendment. The department will consider them general comments and reply to them as such.

COMMENT #3: Commentor noted the serious lack of child care availability for the extreme low income. There is currently no child care available at all for the 0 to 2 year old age group that will accept state payment. Unregistered day care also presents a problem.

RESPONSE: The department accepts the comment and is in agreement with this concern. The department will work closely with the Early Childhood Services Bureau to resolve the situation.

COMMENT #4: Commentor noted that there is a three month wait for any mental health services at all.

RESPONSE: The department accepts the comment and understands the burden that a lack of mental health services availability may place on a family. The department will ensure these concerns are shared with the appropriate divisions within the state and work toward a resolution.

COMMENT #5: Commentor noted that the stringent TANF requirements often put a stop to this family's ability to get ahead.

Commentor noted that the allowable work activities keep getting trimmed down by the department as to what constitutes allowable work activities. The department needs to recognize and allow certain types of activities to be allowable work activities if they are necessary for the parent to become stable in order to be suitable for work forces. Commentor would like to see more latitude in what the department will allow for work activities. If the individual needs mental health treatment or behavioral training in order for them to become employable, the department should consider those activities to be allowable work activities.

RESPONSE: The TANF Reauthorization regulations included in the Deficit Reduction Act of 2005 (DRA) contain strict definitions of allowable work activities. The same regulations contain strict criteria for verification and documentation of such work activities. TANF Reauthorization regulations limit the activities states may claim as allowable work activities for meeting the work participation rate as mandated by the Administration for Children and Families (ACF). Failure to meet the rate will result in monetary penalties to the state. The department has no option but to follow the regulations in order to avoid a monetary penalty.

The department also received the following written comments regarding the proposed ARM amendments:

ARM 37.78.206 and ARM 37.78.506 - Amendments relating to sanctions.

COMMENT #6: "I am writing to oppose the proposed rules to TANF that would include children in the sanctions. Please do not approve this rule change. This is punitive to children and we certainly are a much better state than this."

COMMENT #7: "On behalf of the Fort Peck Assiniboine and Sioux Tribes I have been the designated person to draft this written letter to OPPOSE the TANF rule change that will greatly impact the basic need of children who are members of our reservation. It will also impact relatives and kinship placements that need support in taking on the requested responsibilities. Many of our families are already on fixed

incomes barely meeting their needs. This rule if passed may jeopardize kinship placement as there would be a strong opportunity for them to be sanctioned. On one hand the State of Montana is promoting "Safe and Stable Families" and then present rule changes that would interfere with a child's basic stability of having their financial needs met.

Another point, if parents are sanctioned, children become at risk for removal, families will become homeless, children will become more susceptible to being placed in foster care and raising additional costs for the State and taxpayers.

The Fort Peck Tribes strongly oppose this TANF rule change by resolution on this date."

RESPONSE TO #6 AND #7: In response to the above written comments, the department would refer to the previous response given in regards to ARM 37.78.206 and ARM 37.78.506. The department is amending the proposed ARMs to make two exceptions to the sanction ineligibility period following the children.

/s/ Francis X. Clinch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State October 29, 2007.